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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

SEP 18 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Pacific Bell's Petition for Expedited	)	
Waiver of the Stacking Order on	)	
Discounts to Schools and Libraries	)	

**Petition for Expedited Waiver**

Pacific Bell ("Pacific") requests, pursuant to 47 C.F.R. § 1.3, a waiver of the sequence in which State and federal discounts are to be applied on certain telecommunications services eligible for subsidies under the federal universal service fund and a California counterpart.<sup>1</sup> Currently, the FCC requires that the federal discount be applied first, and any State discount thereafter.<sup>2</sup> Pacific seeks a waiver to reverse the order of stacking, *i.e.*, to permit the discount provided under a California State program to be applied first, and then the federal percentage, on both a retroactive and prospective basis. With the waiver, eligible schools and libraries will be able to receive benefits from both the federal and California state programs as envisioned by the

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<sup>1</sup> With this Petition, neither Pacific nor any of its affiliates waives or otherwise negatively affects any appeal or petition for reconsideration from any Commission action in any proceeding, including those in CC Docket No. 96-45.

<sup>2</sup> Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Federal-State Joint Board on Universal Service; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, CC Docket No. 96-45 CC Docket Nos. 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318 & 196 (1997) ("Fourth Recon Order").

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Fourth Recon Order. Otherwise, the eligible institution will have to chose to participate in only one of the discount programs, to the detriment of achieving their common goal.

A waiver can be granted under § 1.3 “for good cause shown.” “[S]ection 1.3 allows the Commission to grant a waiver if special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest.”<sup>3</sup> Such special circumstances exist, and the requested waiver would clearly serve the public interest by avoiding a tremendously burdensome administrative process for eligible California schools and libraries, and Pacific; by furthering the goal of the Fourth Recon Order; and by potentially increasing the amount of federal funds available to other eligible schools and libraries.

Expedited action is requested due to the approvals for federal discounts that are expected shortly.

## **I. BACKGROUND**

This waiver arises in the context of a discount program established by the California Public Utilities Commission (“CPUC”) that pre-dates the school and library fund established by the FCC. The California Teleconnect Fund, or CTF, requires carriers to tariff a rate for schools

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<sup>3</sup> Order, *New York Department of Public Service Petition for Expedited Waiver of 47 C.F.R. Section 51.19(c)(3)(ii)*, NSD File No. L-98-03, DA 98-1434, & 5 (July 20, 1998).

and libraries that is "50% below the rates charged to other businesses for those services."<sup>4</sup>

Carriers are then reimbursed in an amount equal to "the difference between the tariffed rate for businesses for such services, and the tariffed discount rate" or the amount of the discount on a negotiated rate.<sup>5</sup> Using mechanized systems and processes created to implement the CTF and its discounts, Pacific has been charging, billing, and collecting the tariffed rate reflecting the 50% discount from eligible schools and libraries since February 1, 1997.

Discounts under the FCC's program are expected to soon be approved by the Schools and Libraries Corporation ("SLC") for 1998. Irrespective of such fourth quarter approval, some eligible schools and libraries will receive discounts retroactive as far back as January 1, 1998.

## **II. A WAIVER IS APPROPRIATE, AND WOULD SERVE THE PUBLIC INTEREST AND THE STATUTORY GOAL**

As each currently stands, the CTF and the federal discount program are incompatible when an attempt is made to apply both to the same purchase of an eligible service or product. Specifically, the CTF's structure does not permit stacking with a federal discount that is applied first; the CTF is a program that operates with the use of a separately tariffed rate for schools and libraries that has been calculated from the generally available tariff rate. Conversely, under the

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<sup>4</sup> California Public Utilities Commission, Universal Service Decision 90-10-066, Appendix B, Adopted Rules, 8.B(3) (October 25, 1996).

<sup>5</sup> *Id.*, 8.E.

“stacking” order established by the Fourth Recon Order, the federal discount is to be applied first, e.g., from a charge that does not reflect any State program for schools and libraries. As a result and without the requested waiver, eligible schools and libraries will not be able to benefit from both programs in the complementary fashion envisioned by the Fourth Recon Order, or even receive the full discount that the FCC determined appropriate.<sup>6</sup> In and of itself, that fact alone supports this waiver request.

However, in addition to that unintended consequence, the application of the federal discounts in California will create innumerable administrative burdens, complications, and errors for schools and libraries, and Pacific due to the interplay between the programs. On a retroactive basis, schools and libraries that have qualified for federal discounts will not be able to merely submit for reimbursement to the SLC Pacific bills already received for services previously rendered. They will instead need to go through over nine months of bills in great detail, line-by-line, to be sure not to include for reimbursement items already discounted under the CTF. As it stands now and without the relief sought in this Petition, the stacking order adopted in the Fourth Recon Order will result in frustrated applicants who will have done the work to be approved by the SLC, but will have to assume an even greater burden and strain already limited resources in order to get a lesser benefit than the FCC intended with the federal program and the Fourth Recon Order. All this extra work would have to be occurring at the same time eligible schools

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<sup>6</sup> For example, if a school qualified for a 80% federal discount on a service already purchased at a 50% CTF discount, the school will not receive that additional 30% discount.

and libraries are attempting to perform the steps necessary to qualify for federal discounts for the following federal funding year, depending on the final decision on the dates for program windows in the 1999 funding year.

Similarly, on a prospective basis, qualified schools and libraries will need to choose which program will apply to which eligible services and products, on a service-by-service basis. This would result in an intensive manual effort and tremendous frustration for all California schools and libraries that are eligible under both the federal program and the CTF. Since the account records for each line serving a school or library eligible under the CTF has already had an "indicator" placed on it, Pacific Bell would have to individually and manually remove those indicators on potentially hundreds of thousands of lines so that those eligible services will instead have the federal discounts applied. It is estimated that the Pacific effort alone to manually remove those CTF indicators would require more than 114 people-months.

Furthermore, as noted earlier, Pacific has mechanized the application of the CTF to its school and library customers. Those mechanized processes are programmed to apply the State CTF discount, and cannot be quickly or inexpensively changed to accommodate the federal program being applied before the CTF discount per the Fourth Recon Order. Estimates are that the effort to redo those systems will cost about \$1,000,000 and take 8-10 months after the latter of final federal implementation decisions and CTF modifications.<sup>7</sup> With the requested waiver,

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<sup>7</sup> See pp. XX-YY *infra*. Before systems could begin to be re-programmed in the absence of a waiver, the federal discount requirements would have to be finalized, the CPUC would need to

the CTF discounts would continue to be applied to the tariff or contract rate as currently programmed, and the federal discounts could be applied on the post-CTF discount price without any re-programming of the systems in place for the CTF.

The requested waiver would thus clearly permit California schools and libraries to stack discounts as contemplated by the Fourth Recon Order, thereby receiving the benefit of federal discounts this year and in the future. Eligible schools and libraries would not be faced with choosing to benefit from only one program or the other, and those institutions and Pacific would not have to perform a tremendous amount of manual work to sort eligible products and services between the two programs. The requested waiver will also speed the flow of discounts to approved schools and libraries as they are able to quickly submit their retroactive claims for the federal 1998 funding year using the bills already rendered by Pacific which reflect the CTF discounts.

Further, granting the waiver will in all likelihood make more federal funds available to other eligible schools and libraries, while those in California receive no less total benefit than would have otherwise been received. Inasmuch as the average federal discount is greater than 50%, more eligible institutions are likely to select the federal benefit than the CTF-discounted rate in the absence of the requested waiver. With the waiver, the federal discount would be

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modify its CTF program, and final CTF program requirements for stacking State and federal discounts would also need to be finalized. Once all requirements were finalized, adequate time would be needed to re-program, test, and verify systems so that eligible schools and libraries will not be negatively affected.

applied to a CTF-discounted rate which is half of what it would otherwise be. Significantly, federal funding requirements will be reduced and thus help make funds available to other eligible institutions. To take an example, if Pacific gives approximately \$700,000 per month in CTF discounts to entities also qualified for a federal discount, and if the average federal discount for those same entities is 55%, the federal funding requirement is reduced by approximately \$385,000 per month. As the California CTF, it will remain relatively constant for 1998 as compared to 1997 even in the face of the waiver. Given the constraints on the federal funding, granting the waiver would clearly be in the public interest.

### **III. CPUC ACTIVITY**

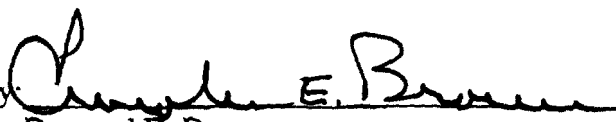

Recognizing the complications arising from the current structure of the CTF and the dependence on the outcome of administrative issues being resolved under the federal discount program, the CPUC has begun the process of modifying it such that the State program can be stacked in accordance with the Fourth Recon Order. The first part of a CPUC workshop has been held, and will be continued after the final processes for the federal program are completed and adopted. In the meantime, the requested waiver would permit eligible schools and libraries to stack and benefit from both the federal and California programs in complementary fashion as envisioned by the FCC.

#### IV. CONCLUSION

For premises considered, Pacific requests a waiver be granted expeditiously to permit "State first, then federal" stacking of discounts for eligible schools and libraries, such waiver to apply retroactively to January 1, 1998, and to continue until such time as the stacking order established in the Fourth Recon Order is subsequently and affirmatively adopted by the CPUC and thereafter implemented.

Respectfully submitted,

PACIFIC BELL

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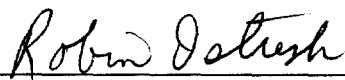
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September 18, 1998



## **CERTIFICATE OF SERVICE**

I, Robin Ostresh, hereby certify that the foregoing, "PETITION FOR EXPEDITED WAIVER," in CC Docket No. 96-45 has been filed this 18th day of September, 1998 to the Parties on the attached service list.

  
\_\_\_\_\_  
Robin Ostresh

September 18, 1998

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